

EXHIBIT

H

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

- - - - -

UNITED STATES OF AMERICA,)
ex rel., DILBAGH SINGH,)
M.D., PAUL KIRSCH, M.D.,)
V. ROA NADELLA, M.D., and) Civil Action
MARTIN JACOBS, M.D.,) No. 04-186E

Relators,)

vs.)

BRADFORD REGIONAL MEDICAL)
CENTER, V&S MEDICAL)
ASSOCIATES, LLC, PETER)
VACCARO, M.D., KAMRAN)
SALEH, M.D., and DOES I)
through XX,)

Defendants.)

DEPOSITION OF EDWARD KABALA
THURSDAY, APRIL 3, 2008

Deposition of Edward Kabala, called as a witness by
the Relators, taken pursuant to Notice of Deposition
and the Federal Rules of Civil Procedure, by and
before Constance Lee, a Court Reporter and Notary
Public in and for the Commonwealth of Pennsylvania,
at the offices of Fox Rothschild, 625 Liberty Avenue,
29th Floor, Pittsburgh, Pennsylvania, commencing at
11:23 a.m. on the day and date above set forth.

1 way.

2 BY MR. STONE:

3 Q. Mr. Kabala, I guess -- how did you come to be
4 involved in a -- in representing Drs. Vaccaro and
5 Saleh back in 2001, 2000, that timeframe?

6 MR. RYCHCIK: I'm going to object to
7 that. I think you're going to be asking him
8 attorney-client communications, and I'm going
9 to instruct him not to answer those
10 attorney-client communications.

11 MR. STONE: This may be a little
12 difficult.

13 Q. Maybe the best way to ask the question would
14 be, Mr. Kabala, do you remember attending meetings
15 with Dr. Vaccaro and Dr. Saleh involving the Bradford
16 Regional Medical Center in 2003?

17 A. Yes.

18 Q. Do you remember when you attended meetings
19 with your clients and other parties?

20 A. Not offhand, but I would think it would be
21 around December of '02 and early part of '03.

22 Q. Do you recall meeting with the Bradford
23 Hospital or the Bradford Regional Medical Center to

1 negotiate the terms of a lease agreement?

2 A. Yes.

3 MR. RYCHCIK: When you say "Bradford
4 Regional Medical Center," you're talking about
5 representatives of the hospital?

6 MR. STONE: That's right.

7 Q. And what were the purpose -- or what was
8 the -- were the substance of those meetings with
9 Bradford relating to a lease agreement?

10 MR. RYCHCIK: Objection as to the form
11 of the question. Are you asking him about the
12 particulars, what was discussed? I mean, the
13 substance is kind of broad.

14 Q. Let's start -- were your clients invited to
15 meet with the hospital in early 2003?

16 A. Yes.

17 Q. And how was that communicated to you or your
18 clients?

19 A. Probably had discussions with Mr. Steinberg.

20 Q. And did you understand that Mr. Steinberg
21 represented the hospital or the hospital
22 administration?

23 A. Yes.

1 MR. RYCHCIK: I want to be careful, Ed.
2 Your understandings -- I don't want you to get
3 into your opinions, your conclusions, those
4 types of areas. Certainly if he communicated
5 that to you, that's fine. I would like to try
6 to limit it to what it was communicated and
7 those communications back and forth.

8 Q. Did Mr. Steinberg tell you that he was
9 representing the hospital and the administration?

10 A. He was representing the hospital, yes.

11 Q. And did he tell you why he wanted to meet
12 with you and your clients?

13 MR. MULHOLLAND: I'll object to the
14 extent that that gets into anything that might
15 constitute work product on behalf of Alan, but
16 I can't instruct him not to answer.

17 Q. Did he tell you why he wanted to meet with
18 you?

19 A. Yes.

20 Q. What did he tell you?

21 A. That the parties had a dispute, and they
22 wanted to talk about ways of seeing if it could be
23 resolved.

1 A. Not that I can recall.

2 Q. Do you know whether -- do you remember
3 whether the doctors, your clients, proposed anything
4 with regard to a lease agreement in that second
5 meeting?

6 A. Probably, but I don't recall specifically
7 when.

8 Q. Did the parties discuss a -- the possibility
9 of a buyout of the doctors' practice or a portion of
10 the doctors' practice?

11 A. No.

12 Q. What was the lease proposal that the doctors
13 made to the hospital at that second meeting?

14 A. Don't know if there was a specific proposal.
15 The original concept was to discuss how the parties
16 could back off from the precepts that they -- the
17 deadlock, the fight that they were involved in, and
18 whether there were legal ways to resolve the issue.

19 I think a number of things were discussed. I
20 don't know that anything was specifically proposed.
21 There was some concepts raised. I think at one point
22 we probably said did they want to buy the camera
23 business, the nuclear camera business, and the

1 hospital said they did not, and then we looked at
2 other alternatives.

3 Q. Did the hospital relate to you at either the
4 first or second meeting what their concerns were with
5 regard to V&S operating this nuclear imaging part of
6 their practice?

7 A. Well, the concerns had been raised in prior
8 correspondence.

9 Q. Did they relate to you at the first or second
10 meeting that their business was -- the volume of
11 their business with regard to nuclear imaging and
12 cardiology was being impacted by your clients'
13 business?

14 MR. RYCHCIK: Objection as to the form
15 of the question. You're asking if that's what
16 was communicated in one of these letters?

17 MR. STONE: No. I'm asking whether that
18 was communicated in either one of the
19 meetings.

20 A. I don't recall that being a topic of
21 discussion at the meetings.

22 Q. At either of these meetings did the hospital
23 present any information with regard to the volume of

1 referrals or the decline in referrals that was
2 resulting from the V&S imaging practice?

3 A. No.

4 MR. RYCHCIK: I just want to be clear.
5 You're talking about the first two meetings?

6 MR. STONE: Yes.

7 MR. RYCHCIK: In the event there were
8 subsequent meetings --

9 MR. STONE: We will get to those.

10 Q. By the time you got to the end of the second
11 meeting, had the parties reached any agreement with
12 regard to a lease arrangement?

13 A. Not that I recall.

14 Q. Was there an agreement or consensus to meet
15 again?

16 A. I believe there was a thought that we would
17 meet again, but I don't know that anybody had any
18 particular agreement on it.

19 Q. How long after that do you think you met?

20 A. Another month maybe.

21 Q. So that would be possibly early February?

22 A. Early February, I guess.

23 Q. And at that time did the hospital request an

1 we will mark this one as Deposition Exhibit No. 1.

2 This next one we will mark as Deposition
3 Exhibit 2?

4 (Kabala Exhibit Nos. 1 and 2 were marked
5 for identification.)

6 MR. RYCHCIK: Take your time to read
7 through this one as well.

8 THE WITNESS: Uh-huh.

9 (Witness reviews document.)

10 A. Okay.

11 Q. Is this letter familiar to you?

12 A. It is.

13 Q. Have you previously received it?

14 A. I have.

15 Q. And I think you testified that Ms. Hobbs was
16 working with you; is that correct?

17 A. That's correct.

18 Q. Now, both Exhibit 1 and 2 refer to this
19 meeting on March 8th, 2003.

20 A. Yes.

21 Q. Is it your recollection that that meeting was
22 largely about or substantially about the lease
23 arrangement?

1 A. No. It was -- it was -- the lease
2 arrangement was discussed. It was also about the
3 under arrangements model and the hospital's desire to
4 have Drs. Vaccaro and Saleh participate in that.

5 Q. Okay. Do you recall where that meeting took
6 place?

7 A. I think it's in Mr. Steinberg's office.

8 Q. And Ms. Hobbs' letter refers to Drs. Vaccaro
9 and Saleh being present, yourself, Mr. Steinberg and
10 Mr. Mulholland and Mr. Leonard. Is that what you
11 remember?

12 A. As I recall, Mr. Steinberg had some other
13 issues, and he was in and out, but yes.

14 Q. So those persons would have attended at least
15 some part of that meeting?

16 A. I believe so.

17 Q. Do you remember whether the hospital
18 requested this meeting or whether this was a meeting
19 that was requested by your clients?

20 A. I don't recall whether -- who actually
21 requested it. I mean --

22 Q. Do you remember how long this meeting lasted?

23 A. Pretty much all morning.

1 Q. And what do you remember about the
2 discussions involving the lease?

3 MR. RYCHCIK: Objection as to the form
4 of the question.

5 You can go ahead and answer.

6 Are you looking to just in general what
7 he remembered, every discussion that took
8 place? It's a broad area.

9 Q. Well, I'm certainly not asking you about what
10 you advised your clients out of the presence of other
11 parties, but I'm talking about the discussions
12 between the parties and the lawyers involving the
13 lease. What do you remember about those discussions?

14 A. At this stage the concept was to have
15 Drs. Vaccaro and Saleh eventually join in to
16 something called an under arrangements model. We
17 were discussing whether the parties would wait for
18 the under arrangements model to be implemented or
19 whether there was a way that we could legally develop
20 some methodology for the hospital to take over the
21 nuclear camera and the nuclear camera business at an
22 earlier stage because it would take some time for the
23 under arrangements model to be implemented.

1 Q. You said at the early meetings the hospital
2 did not seem to be interested in a lease arrangement?

3 A. That's correct.

4 Q. At this meeting in March did they express or
5 relate to you that they were now interested in the
6 proposal?

7 A. At the beginning of the meeting, as I recall,
8 they said they were interested in talking about it
9 further, that they had originally said they were not
10 interested, and they were interested in seeing if one
11 could be worked out by the parties in a way that
12 would be satisfactory to the lawyers and the clients.

13 Q. Who made the first proposal with regard to
14 the amount of the lease payment?

15 A. Probably me.

16 Q. And did you relate to the hospital why the
17 doctors felt that it was worth a certain amount in
18 terms of a per diem charge or a monthly charge?

19 A. I'm sure I did.

20 Q. And what did you tell -- what did you tell
21 the hospital about what the basis for that proposal
22 was?

23 A. I told the hospital that although it was just

1 basically in its first year, the doctors were making
2 a substantial number of dollars and would anticipate
3 making additional dollars over the period as the
4 business grew, and that if they were to put at some
5 point through the under arrangements model, then
6 that -- that plus some other ventures would be there.

7 But if we were going to be talking about
8 something before the under arrangements model, then I
9 had proposed, I think, something in the area of
10 \$2,000 per day as a sublease.

11 Q. And did you relate to the hospital that it
12 was -- that whatever arrangement was agreed upon
13 would have to compensate the physicians for the loss
14 of the business opportunity or the loss of the
15 profit? Is that what you were --

16 A. They were giving up some profit of \$240,000
17 initially and then more later, so my proposal was
18 that they compensate the doctors for the camera, the
19 cost of the camera and basically for a noncompete.
20 The form, whether we did it as a sublease or a
21 sublease and a noncompete or whatever, all those
22 things were talked about, and it basically got down
23 to one document.

1 Q. Well, was it the hospital that requested the
2 noncompete, or was it the doctors that proposed the
3 noncompete?

4 A. I don't know that -- I think probably that I
5 proposed the noncompete. Again, we had been looking
6 for an appropriate methodology that was satisfactory
7 to the government, that was satisfactory to the
8 lawyers and satisfactory to the clients, and that was
9 one that was basically in use in many, many
10 transactions that were ongoing in the '90s and early
11 2000s and still today.

12 Q. Did the hospital counter your proposal, which
13 was, I guess, the \$2,000 plus these other elements
14 that you talked about?

15 A. The hospital, as I recall, simply said no to
16 the original number, and by the end of the day I
17 believe we had gotten down to where the -- they would
18 at least look at a \$1,500 number, but they hadn't
19 agreed to anything.

20 Q. And did the hospital, during the course of
21 those discussions, did the hospital relate to you a
22 reason or justification for their position that they
23 were willing to pay something, but not as much as you

1 were looking for?

2 A. Well, the hospital wanted to -- if the
3 hospital wanted to take it over, then they are to be
4 certain that what they were paying was fair market
5 value. They thought the original number wasn't, or
6 even if it was, they weren't ready to pay it. So
7 they were going to consider what they thought was
8 fair market value for taking over this business and
9 for the noncompete.

10 Q. When you say "fair market value for taking
11 over the business," at this point the sale of the
12 business was off the table. Is that true? Is that
13 correct?

14 A. Well, there was no purchase of the business.

15 Q. Okay.

16 A. But the doctors would give up the business
17 pursuant to the noncompete. So the hospital would be
18 taking over the tech, the camera, moving it to the
19 hospital, and integrating it into their department
20 initially and ultimately into the under arrangements
21 model, if that took off and went anywhere.

22 Q. Did the hospital indicate to you that they
23 were evaluating the lease payments based on the --

1 the fair market value of the business then?

2 A. I don't know that the hospital said that, how
3 they were evaluating it. I just think that we got to
4 a point where we had gone as far as we could that
5 day, we understood the general concepts, and they
6 wanted to look at what their position would be and
7 whether they wanted to go any further with it.

8 Q. Did the hospital, at that point or at any
9 previous point, request any information from your
10 clients relating to the volume of the business?

11 A. I think what they requested and what
12 Dr. Saleh eventually gave them was the gross
13 collections and the expenses of the business.

14 Q. Did the hospital share with you or your
15 clients any information regarding referral rates or
16 business volume from their records?

17 MR. RYCHCIK: Are you talking about at
18 any time related to a sublease, or are you
19 talking about at this particular meeting?

20 Q. I'm talking about first this particular
21 meeting, and then I'll ask you a follow-up question.

22 A. The only information that we ever received
23 from the hospital was information generally at some

1 point on the under arrangements model. There was
2 never any question of referrals.

3 Q. And at this meeting in March of 2003, was the
4 lease discussed in the context of an ultimate under
5 arrangements venture?

6 A. There were two phases basically, actually
7 three phases. An initial phase where the parties
8 would generally have a concept, a period of time
9 where the hospital would obtain a fair market value
10 opinion or the noncompete, and then presumably if the
11 under arrangements model was ready at that time,
12 would it go there. If it wasn't, then there would be
13 an interim phase if the parties reached an agreement,
14 there would be a takeover before the under
15 arrangements model.

16 Q. So the discussions involved the terms of this
17 interim arrangement or lease as well as the ultimate
18 under arrangements venture; is that right?

19 A. It was very limited as to the under
20 arrangements model. They had to get all of their
21 materials together. They had to see what -- the
22 hospital's intent as they expressed it to the doctors
23 and to me was to find some mechanism for solidifying

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
 WESTERN DISTRICT OF PA - ERIE) SS:


I, Constance Lee, a Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that before me personally appeared EDWARD KABALA, the witness herein, who then was by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the taking of his oral deposition in the cause aforesaid; that the testimony then given by him as above set forth was reduced to stenotypy by me, in the presence of said witness, and afterwards transcribed by computer-aided transcription under my direction.

I do further certify that this deposition was taken at the time and place specified in the foregoing caption, signature was not waived.

I do further certify that I am not a relative of or counsel or attorney for any party hereto, nor am I otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Pittsburgh, Pennsylvania, on this 7th day of April, 2008.

The foregoing certification does not apply to any reproduction of this transcript in any respect unless under the direct control and/or direction of the certifying reporter.


 COMMONWEALTH OF PENNSYLVANIA
 Notarial Seal
 Constance Lee, Notary Public
 Reserve Twp., Allegheny County
 My Commission Expires Aug. 8, 2009
 Constance Lee, Notary Public in and for the Commonwealth of Pennsylvania

CLee – April 3, 2008

ERRATA SHEET

WITNESS NAME: Edward Kabala

[illegible]

Johnson and Mimless
1334 Fifth Avenue
Pittsburgh, PA 15219